

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES H.¹,
Plaintiff

v.

LELAND DUDEK, Acting
Commissioner of Social Security,
Defendant.

Case No. 2:24-cv-05631-GJS

**MEMORANDUM OPINION AND
ORDER**

Plaintiff filed a complaint seeking review of the denial by the Social Security Administration (“SSA”) – sued through its Acting Commissioner of Social Security (“Commissioner”) – of Plaintiff’s applications for Supplemental Security Income and Child’s Insurance Benefits. The parties filed briefs addressing the disputed issue in the case [Dkt. 11 and 14]. Pursuant to 28 U.S.C. § 636(c), both parties have consented to the undersigned for all purposes. [Dkt. 16.] The Court has taken the parties’ briefing under submission without oral argument. For the reasons discussed below, the Court finds that this matter should be affirmed.

¹ In the interest of privacy, this Order uses only the first name and the first initial of the last name of the non-governmental party.

I. ADMINISTRATIVE PROCEEDINGS

A. Agency Proceedings

Plaintiff filed his applications for benefits on September 14, 2021. He alleged that his disability began on April 9, 2018, and was the result of a spinal tumor, severe anxiety, and phobias. [Administrative Record, Dkt. 7-1 through 7-8 (“AR”) 17, 131-33, 259-72.] On December 14, 2021, the SSA denied Plaintiff’s applications initially, and on April 28, 2022, the SSA denied them again on reconsideration. [AR 134-43, 145-50.] Plaintiff requested a hearing, which was held before an administrative law judge (“ALJ”) on August 30, 2023. [AR 38-62.] On September 18, 2023, the ALJ issued a written decision that was unfavorable to Plaintiff. [AR 14-37, the “Decision.”] Plaintiff appealed, and on May 8, 2024, the Appeals Council denied review. [AR 1-5.]

B. Administrative Decision Under Review

In his Decision,² the ALJ applied the five-step sequential evaluation process. [AR 18.] *See* 20 C.F.R. § 416.920(b)-(g)(1). At step one, the ALJ found that Plaintiff had not attained the age of 22 as of, and has not engaged in substantial gainful activity since, his alleged onset date. [AR 19.] At step two, the ALJ found that Plaintiff suffered from the following severe impairments: malignant neoplasm of the spinal cord status post laminectomy; anxiety disorder; depressive disorder; and bipolar disorder. [*Id.*] At step three, the ALJ determined that Plaintiff did not have an impairment or combination of impairments that meets or medically equals

² The ALJ’s Decision addressed both the physical and mental impairments alleged by Plaintiff. As discussed below, Plaintiff raises only a single issue in this case related to whether a particular mental functional limitation found was properly accounted for by the ALJ in the residual functional capacity (“RFC”) he assessed. Plaintiff does not challenge the ALJ’s findings with respect to his physical or mental impairments, or the ALJ’s treatment of the medical evidence, or whether the ALJ properly accounted in the RFC for the other functional limitations he found, or any other such claims. Accordingly, both directly below and in its analysis, the Court has discussed the Decision, Plaintiff’s statements and testimony, and the medical evidence only insofar as they pertain to the specific claim raised in this case.

the severity of one of the listed impairments. [AR 20-22.] At step four, the ALJ found that Plaintiff has the RFC “to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b).” [AR 23-29.] Specifically, the ALJ identified various physical and exertional efforts Plaintiff could perform and, of relevance here, found that “he can do nonpublic, simple, routine and repetitive tasks.” [AR 23.] The ALJ further found that Plaintiff had no past relevant work, but he could perform other work such as a machine pack assembler (DOT³ 920.687-122), racker (DOT 524.687-018), or small products assembler (DOT 739.687-030), which were light, unskilled work with SVPs⁴ of 1 and 2. AR 30.] The ALJ determined that Plaintiff, therefore, is not disabled. [AR 31.]

II. THE PERTINENT RECORD

The Administrative Record contains medical evidence and testimony regarding all of Plaintiff’s impairments, both physical and mental. Much of that evidence, however, is not relevant here given the discrete nature of Plaintiff’s single claim. The Court will discuss only those portions of the record pertinent to Plaintiff’s claim, *i.e.*, that relate to a moderate mental limitation found with respect to the functional area of adapting or managing oneself and the RFC. [See AR 22.]

A. Plaintiff’s Statements And Testimony

Plaintiff testified at the hearing before the ALJ. Plaintiff has had one job since high school – working part-time for two months at a Farmer Boys restaurant. He had to stop working due to his anxiety. [AR 48-49.] He does not drive due to his anxiety, and he does not take public transportation, because he panics unless his mother is present with him. [AR 49-51.]

Plaintiff has been under psychiatric care since he was a child. He takes

³ *Dictionary of Occupational Titles* (U.S. Department of Labor, 1991).

⁴ Specific Vocational Preparation, as defined in DOT, Appendix C.

1 medication for anxiety, depression, and sleep, and they help “minimally” and relieve
2 his symptoms “mildly,” but he still has a lot of anxiety and depression. [AR 51-52.]

3 When asked about obstacles to working, Plaintiff stated that he gets so
4 anxious that he cannot think and freezes up. He forgets what he is doing and has to
5 be reminded. He also gets shaky and throws up. This happens not only at work but
6 also at home and in a store. Plaintiff’s panic attacks last anywhere from an hour to
7 all day. He takes Lorazepam when he has a panic attack. [AR 54-55.]

8 In his Function Report, Plaintiff stated that he cannot drive and avoids social
9 situations due to his anxiety. [AR 318.] He showers more than once a day because
10 it helps with his anxiety. [AR 319.] He engages in light yard and housework,
11 including watering plants, laundry, vacuuming, doing the dishes, and taking out the
12 trash. [AR 320.] Plaintiff does some light cooking and baking, plays the violin,
13 knits and crochets, draws, does arts and crafts, scrolls through Tik-Tok, listens to
14 music, and watches tv. [AR 319-20, 322.] When he feels “good enough,” he takes
15 care of his cat. [AR 319.] He goes to the grocery store once a week for 30 minutes
16 to an hour, accompanied by someone else. [AR 321-22.] Plaintiff stated that he
17 gets along “pretty good” with authority figures. [AR 323.]⁵

18 **B. Medical Evidence**

19 Plaintiff reported to the doctors treating him for his spinal problem that he
20 smoked cannabis for his physical pain. [AR 413, 416, 423.] On November 26,
21 2019, a treating physician reported that Plaintiff had an appropriate mood and affect.
22 [AR 574.]

23 On December 3 and 17, 2020, a nurse practitioner (Aizzel Trieu) reported that
24 Plaintiff had good eye contact, was alert and oriented, showed no memory or
25 concentration/attention deficits, and had a clear and coherent thought process,
26

27 ⁵ In 2018, Plaintiff reported to his doctor that he had visited Disneyland. [AR
28 397.]

1 although he reported that he was sad, depressed, anxious, lacked motivation, and
2 slept poorly. [AR 695, 697.] In January 11, February 11, March 11, April 1 and 9,
3 May 7, July 16, August 19, September 24, and October 22, 2021 telephonic
4 consultations with NP Trieu, Plaintiff's mental status evaluations were again
5 primarily normal, with, *inter alia*, a euthymic mood, good concentration, and no
6 deficit in concentration or attention, and Plaintiff reported that he felt better and did
7 not wish to take antidepressants. [AR 699, 701, 705, 707-14, 718, 722, 724.] On
8 November 15, 2021, Plaintiff's mental status examination was normal, although NP
9 Trieu described his mood as sad, depressed, and anxious. [AR 769.] On December
10 13, 2021 and January 12, February 10, and March 10, 2022, Plaintiff's mental status
11 examinations by NP Trieu were again primarily normal and his mood was euthymic
12 on the December, February and March visits, although labile on the January visit.
13 [AR 765-68.] On March 24, 2022, Plaintiff's mental status examination again was
14 normal, but his mood was labile and irritable. [AR 764.] On April 28, May 26,
15 June 16, and July 29, 2022, Plaintiff's mental status examination was normal and his
16 mood was euthymic. [AR 824-28.] On August 15, 2022, Plaintiff reported to NP
17 Trieu that he had stopped most of his medications and had increased anxiety, anger,
18 and irritability and unstable mood swings. [AR 823.] On August 25, 2022,
19 Plaintiff's mental status examination was normal and his mood euthymic. [AR
20 822.] On September 14, 2022, Plaintiff's mental status examination was normal but
21 his mood was sad, depressed, and labile. [AR 821.] On September 27, October 27,
22 and November 23, 2022, Plaintiff's mental status examinations were normal and his
23 mood euthymic. [AR 816, 819-20.] On December 22, 2022, Plaintiff's mental
24 status examination was normal but his mood was anxious. [AR 815.]⁶

25
26 ⁶ On September 14, 2022, NP Trieu opined that Plaintiff had moderate to
27 marked to extreme limitations in all work-related mental functions, including an
28 extreme limitation in adaptability. [AR 772-74.] The ALJ found the NP's opinion
to be unpersuasive, because it was inconsistent with the evidence of record,
including her own evaluations. [AR 29.] Plaintiff has not challenged that ALJ's

On January 26, February 23, March 23, April 20, and May 18, 2023, Plaintiff was seen by a different nurse practitioner (Lynda Akoto). His mental status examinations showed that he was awake and alert, had a calm and pleasant mood, had an appropriate affect, had a linear, coherent and organized thought process, and appropriate attention and concentration. Plaintiff reported that he has daily anxiety and panic attacks once or twice a year, and that he occasionally uses marijuana. [AR 775-82, 792-801.]⁷

III. PLAINTIFF'S CLAIM

Plaintiff contends that the ALJ committed legal error, because although the ALJ assessed a moderate functional limitation in adapting and managing oneself, the ALJ failed to account for that limitation in crafting the mental RFC.

IV. GOVERNING STANDARD

Under 42 U.S.C. § 405(g), the Court reviews the Decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used correct legal standards. *See Brewes v. Comm'r Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012); *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008). "Substantial evidence ... is 'more than a mere scintilla' ... [i]t means – and means only – 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (citations omitted); *see also Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519, 522 (9th Cir. 2014) ("Substantial evidence is more than a

finding, and thus, the Court will not consider this opinion rendered by NP Trieu further.

⁷ On August 17, 2023, NP Akoto opined as to Plaintiff's mental functional limitations. [AR 831.] The ALJ found her opinion unpersuasive [AR 29] and Plaintiff has not challenged that finding. Accordingly, the Court will not consider that opinion further.

1 mere scintilla but less than a preponderance.”) (internal quotation marks and citation
2 omitted).

3 The Court will uphold the Commissioner’s decision when “‘the evidence is
4 susceptible to more than one rational interpretation.’” *Burch v. Barnhart*, 400 F.3d
5 676, 681 (9th Cir. 2005) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
6 1989)). However, the Court may review only the reasons stated by the ALJ in the
7 decision “and may not affirm the ALJ on a ground upon which he did not rely.”
8 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not reverse the
9 Commissioner’s decision if it is based on harmless error, which exists if the error is
10 “inconsequential to the ultimate nondisability determination, or that, despite the
11 error, the agency’s path may reasonably be discerned.” *Brown-Hunter v. Colvin*,
12 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations omitted).

13 14 V. DISCUSSION

15 Before making the step four and five determinations, the ALJ first must
16 determine the claimant’s RFC. 20 C.F.R. § 416.920(e). The RFC is “the most [one]
17 can still do despite [his or her] limitations” and represents an assessment “based on
18 all the relevant evidence.” 20 C.F.R. § 416.945(a)(1). An RFC determination is a
19 legal decision that is expressly reserved for the Commissioner. “[I]t is the
20 responsibility of the ALJ, not the claimant’s physician, to determine residual
21 functional capacity.” *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001).

22 At step three, following the “special technique” described in 20 C.F.R. §
23 416.920a to determine whether Plaintiff’s claimed mental impairments were
24 “severe,” the ALJ assessed Plaintiff’s degree of functional limitation in four
25 functional areas. [AR 20-22.] In the fourth area – adapting or managing oneself –
26 the ALJ found that Plaintiff has a moderate limitation. The ALJ further found that
27 this moderate limitation would be accommodated by limiting Plaintiff to simple,
28 routine, and repetitive tasks. [AR 22.] The ALJ then included that simple, routine,

1 and repetitive tasks restriction in the RFC he formulated and in the hypothetical he
2 propounded to the vocational expert. [AR 23, 60.]

3 Plaintiff argues that, as a matter of law, including a simple, routine, and
4 repetitive tasks restriction in the RFC cannot adequately accommodate a finding of a
5 moderate functional limitation for adapting or managing oneself. Plaintiff relies on
6 caselaw finding that, as a general matter, limiting a claimant to simple, routine, and
7 repetitive tasks in the RFC without further restrictions fails to encompass a
8 functional mental limitation such as concentration, pace, and persistence.
9 Defendant, in turn, relies on another line of Ninth Circuit caselaw finding that, when
10 supported by the medical evidence, limitations to simple, routine, and repetitive
11 tasks can account adequately for moderate mental functional limitations.

12 In the Ninth Circuit, the line of caselaw on which Plaintiff relies has its origin
13 in two unpublished Circuit Court decisions involving the step three concentration,
14 persistence, and pace functional limitation. These decisions are often described as
15 holding that, as an abstract principle, this particular functional limitation cannot be
16 adequately accommodated through a simple, routine, and repetitive tasks restriction
17 in the RFC. *See Brink v. Comm'r of Soc. Sec. Admin.*, 343 Fed. App'x 211, 212 (9th
18 Cir. 2009) ("The Commissioner's contention that the phrase 'simple, repetitive
19 work' encompasses difficulties with concentration, persistence, or pace is not
20 persuasive. Indeed, repetitive, assembly-line work . . . might well require extensive
21 focus or speed."); *see also Lubin v. Comm'r of Soc. Sec. Admin.*, 507 Fed. App'x
22 709, 712 (9th Cir. 2013) ("Although the ALJ found that the [claimant] suffered
23 moderate difficulties in maintaining concentration, persistence, or pace, the ALJ
24 erred by not including this limitation in the residual functional capacity
25 determination or in the hypothetical question to the vocational expert."). There have
26 been a number of district court decisions in this Circuit relying on *Brink/Lubin* to
27 conclude that when a moderate functional mental limitation is found, adding a
28 simple, routine, and repetitive tasks restriction to the RFC is inadequate to

1 accommodate that restriction. *See, e.g., Jill R.C. v. O'Malley*, No. 2:22-cv-01663-
2 DJA, 2024 WL 303804, at *5 (D. Nev. Jan. 25, 2024) (collecting cases).

3 The *Brink/Lubin* line of cases is distinguishable from the line of cases
4 following the published decision of *Stubbs-Danielson v. Astrue*, 539 F.3d 1169 (9th
5 Cir. 2008), on which Defendant relies. In *Stubbs-Danielson*, the ALJ did not make a
6 separate step three finding that the claimant had a moderate limitation in
7 concentration, persistence, or pace but, rather, “translated” a physician’s conclusions
8 regarding pace and mental limitations into a restriction to “simple tasks.” The Ninth
9 Circuit found that the ALJ’s translation adequately incorporated the medical
10 evidence concerning the claimant’s impairments and held, as a general rule, that an
11 “assessment of a claimant adequately captures restrictions related to concentration,
12 persistence, or pace where the assessment is consistent with the restrictions
13 identified in the medical testimony.” *Id.* at 1174.

14 Some courts have extended the *Stubbs-Danielson* reasoning to cases in which
15 the ALJ actually did find a moderate limitation in concentration, persistence, and
16 pace at step three and accommodated it by assessing an RFC restricting the plaintiff
17 to simple, routine tasks. As many courts have reasoned, “the special analysis for
18 mental disorders, which includes an assessment of concentration, persistence, and
19 pace, is a severity analysis [performed at step three] which is distinct from the
20 functional analysis at step five of the sequential evaluation.” *Phillips v. Colvin*, 61
21 F. Supp. 3d 925, 940 (N.D. Cal. 2014); *see also Israel v. Astrue*, 494 Fed. App’x
22 794, 796 (9th Cir. 2012) (“The limitations identified in step 3, however, are ‘not an
23 RFC assessment but are used to rate the severity of mental impairment(s) at steps 2
24 and 3.... The ALJ must consider the step-3 limitations along with ‘all of the relevant
25 evidence in the case record,’ . . . when forming the RFC.”) (citation omitted);
26 *Bordeaux v. Comm’r of Soc. Sec. Admin.*, No. 3:12-cv-01213-JE, 2013 WL
27 4773577, at *12 (D. Ore. Nov. 18, 2013) (rejecting claimant’s argument that the
28 ALJ was required to incorporate into the RFC and the hypothetical to the vocational

1 expert the particular functional limitations found at step three, because this argument
2 improperly conflated the ALJ's step three analysis with the ALJ's RFC assessment
3 at steps four and five). In this line of cases, "the relevant question is whether the
4 medical evidence supports a particular RFC finding" with regard to the functional
5 limitation in question. *Phillips, supra*,

6 Thus, for example, in *Wilder v. Comm'r of Soc. Sec. Admin.*, 545 Fed. App'x
7 638, 639 (9th Cir. 2013), the ALJ rejected a claim of error based on the ALJ's
8 failure to include a step three finding of moderate difficulties in maintaining
9 concentration, persistence and pace in the RFC assessment and in the hypothetical
10 posed to a vocational expert, because the medical evidence did not support any
11 work-related limitation in the claimant's ability to sustain concentration, persistence,
12 or pace and "[s]ubstantial evidence therefore does not support functional limitations
13 more severe than limitation to 'simple, routine, repetitive work' accounted for in the
14 RFC and the hypothetical question posed to the VE." In *Bordeaux*, 2013 WL
15 4773577, at *13, the court found no error in the ALJ's omission from the RFC of the
16 "specific [concentration, persistence, and pace] finding set out in the special
17 technique," when "a careful review of the medical evidence and the ALJ's decision
18 supports the conclusion that the ALJ's RFC adequately accounted for . . . the 'less
19 than substantial limitations in concentration, persistence and pace at simple work
20 activities' identified by" a physician). In *Mitchell v. Comm'r of Soc. Sec. Admin.*,
21 No. 2:12-CV-0358-CMK, 2013 WL 5372852, at *5 (E.D. Cal. Sept. 25, 2013), the
22 district court found no error based on the plaintiff's complaint that the "ALJ failed
23 to adequately explain how a limitation to simple instructions would fully account for
24 the acknowledged moderate difficulties with concentration," reasoning that: "the
25 special analysis for mental disorders, which includes an assessment of
26 concentration, persistence, and pace, is a severity analysis which is distinct from the
27 functional analysis at step five of the sequential evaluation"; and "the Ninth Circuit
28 has held that a limitation to, as here, simple work adequately captures moderate

1 limitations in concentration, persistence, and pace” (citing *Stubbs-Danielson*). On
2 appeal, the Ninth Circuit agreed that: “the special analysis for mental disorders . . .
3 is a severity analysis which is distinct from the functional analysis at step five of the
4 sequential evaluation”; and there was no error in “the ALJ’s failure to include his
5 own finding of moderate limitations in concentration, persistence, and pace in the
6 residual functional capacity assessment,” because the ALJ had accounted for the
7 moderate limitation “proper[ly]” and “complete[ly]” in the RFC and the
8 hypothetical by limiting the claimant to simple, repetitive tasks, notwithstanding the
9 vocational expert’s statement that adding in a moderate limitation as to
10 concentration, persistence and pace would mean no work was available. *Mitchell v.*
11 *Colvin*, 642 Fed. App’x 731, 733 (9th Cir. 2016).

12 As noted by one Judge in this District, the distinction between the Ninth
13 Circuit’s decision in *Stubbs-Danielson* and *Brink* is a “well-worn track.” *Juanita S.*
14 *v. Berryhill*, No. CV 17-7659-MRW, 2018 U.S. Dist. LEXIS 163468, at *6 (C.D.
15 Cal. Sep. 24, 2018). In *Stubbs-Danielson*, the circuit court concluded that moderate
16 pace limitations may translate into a “simple task” RFC without additional
17 conditions when consistent with the evidence of record. *Stubbs-Danielson*, 539 F.3d
18 at 1173-74. That is, an ALJ can “account[] for [a claimant’s] moderate functional
19 limitations in the residual functional capacity” with a simple work limit. *Mitchell*,
20 642 Fed. App’x at 733. On the other hand, under *Brink/Lubin*, a simple work
21 restriction in an RFC generally does not adequately address a step two/three
22 functional limitation.

23 The Court finds no error in this case under either the *Brink/Lubin* or *Stubbs-*
24 *Danielson* lines of cases, because Plaintiff has not shown that the ALJ’s inclusion of
25 a simple, routine, or repetitive tasks restriction in the RFC failed to adequately
26 accommodate Plaintiff’s moderate functional limitation found at step three.
27 Significantly, Plaintiff does not identify any evidence of record that renders him
28 unable to do simple, routine, and repetitive tasks. There is no doctor or other

1 medical professional opinion that, if credited, would “translate” into an RFC
2 restriction more severe than the limitation to simple, routine, and repetitive tasks.
3 There also is no doctor or other medical professional opinion that, had it been
4 credited, would “translate” into an inability to perform the three light, unskilled jobs
5 that the vocational expert identified as able to be performed by Plaintiff with the
6 restriction to non-public, simple, routine, and repetitive tasks.⁸

7 Plaintiff simply is incorrect in asserting that the ALJ did not consider
8 Plaintiff’s moderate limitation in adapting or managing oneself. The ALJ did
9 consider that functional limitation, discussed the record evidence, and expressly
10 concluded that the limitation would be “accommodated” by limiting Plaintiff to
11 simple, routine, and repetitive tasks. [AR 22.] In doing so, the ALJ found that,
12 despite Plaintiff’s moderate limitation, he was “capable of responding to demands,
13 adapting to changes, managing psychologically based symptoms, distinguishing
14 between acceptable and unacceptable work performance, making plans for [himself]
15 independently of others, maintaining personal hygiene and attire appropriate to a
16 work setting, and being aware of normal hazards and taking precautions despite his
17 alleged mental impairment.” [*Id.*] The ALJ surveyed the medical evidence,
18 recounted Plaintiff’s various daily activities, and concluded that Plaintiff’s “mental
19 status evaluations were mostly within normal limits,” further observing that in
20 January and May 2023, he reported “compliance and effectiveness of his
21 medication,” a stable mood, motivation and energy, improved sleep, manageable
22 anxiety, decreased anger and irritability, and regular activities of daily living. [AR
23 22, 27-28.]

24
25 ⁸ Plaintiff asserts that the three jobs found “exceed” the step three moderate
26 functional limitation found by the ALJ, but Plaintiff fails to proffer any explanation
27 or basis for this assertion. All three jobs are light, unskilled work with an SVP of 1
28 or 2, and nothing about their descriptions in the DOT indicates that a person with a
moderate limitation in adapting or managing oneself could not perform these jobs.

1 The ALJ gave a detailed consideration to the record of Plaintiff's mental
2 limitations, both in determining their severity at steps two and three and in
3 formulating Plaintiff's RFC at step four. Plaintiff does not point to any additional
4 evidence that the ALJ failed to consider in reaching his conclusions. The ALJ's
5 interpretation of the evidence – viz., that it demonstrates that a restriction to simple,
6 routine, and repetitive tasks will adequately accommodate Plaintiff's moderate
7 adapting or managing oneself functional limitation – is not irrational, and when the
8 evidence “is susceptible to more than one rational interpretation, it is the ALJ's
9 conclusion that must be upheld.” *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir.
10 2020) (citation omitted).

11 While Plaintiff obviously disagrees with the ALJ's conclusion that a simple,
12 routine, and repetitive tasks restriction in the RFC would accommodate Plaintiff's
13 moderate functional limitation in adapting and managing oneself, he does not show
14 that it was error given Plaintiff's failure to identify any medical evidence indicating
15 otherwise.⁹ See *Sabin v. Astrue*, 337 Fed. Appx. 617, 621 (9th Cir.2009) (observing
16 that “[t]he ALJ determined the end result of [claimant's] moderate difficulties as to
17 concentration, persistence, or pace was that she could do simple and repetitive tasks
18 on a consistent basis,” and finding no error in an RFC restriction to simple and
19 repetitive tasks when doing so was consistent with the medical evidence and
20 “adequately captured” the tasks the claimant was able to perform despite her step
21 three moderate functional limitation); *Phillips*, 61 F. Supp. 3d at 939-40 (“Moderate
22 limitations do not have to be exactly mirrored in the RFC determination” as long as
23 the relevant medical evidence supports the ALJ's finding as to the appropriate RFC
24 restriction). “Moderate mental functional limitations – specifically limitations in
25 social functioning and adaptation – are not per se disabling, nor do they preclude the
26

27 ⁹ Again, the ALJ found the two NP opinions assessing more substantial
28 limitations to be not persuasive, and Plaintiff has not challenged the ALJ's treatment
of those opinions. Accordingly, they have no bearing on the claim at issue here.

1 performance of jobs that involve simple, repetitive tasks.” *McLain v. Astrue*, No.
2 SACV 10-1108-JC, 2011 WL 2174895, at *6 (C.D. Cal. June 3, 2011); *see also*
3 *Rose M.E. v. Saul*, No. 5:20-cv-01199-AFM, 2021 WL 1612091, at *3 (C.D. Cal.
4 April 26, 2021) (“The SSA defines a ‘moderate’ limitation to mean ‘[t]here is more
5 than a slight limitation in this area, but the individual can still function
6 satisfactorily.’”) (citations omitted). “Although a limitation to simple and repetitive
7 tasks (or similar verbiage) is not a catchall accommodation for all mental
8 limitations, it is notable that ‘district courts throughout the Circuit have []
9 concluded a claimant’s low tolerance for stress or moderate limitations in dealing
10 with changes are encompassed in a residual functional capacity of simple, repetitive
11 tasks.’” *Trede v. Commission of Social Security*, No. 1:23-cv-1691-GSA, 2024 WL
12 4855271, at *5 (E.D. Cal. Nov. 20, 2024) (citation omitted and collecting cases).

13 At its core, Plaintiff’s argument is that an RFC restriction to simple, routine,
14 and repetitive tasks cannot constitute an accurate translation or accommodation of a
15 claimant’s moderate difficulties with adapting or managing oneself as an
16 unassailable legal proposition, not that this is so based on the particular facts of his
17 case. Plaintiff’s “as a matter of law” type argument is unpersuasive in light of
18 *Stubbs-Danielson* and the numerous Ninth Circuit and District Court cases since
19 then making clear that a step three functional limitation need not be mirrored
20 precisely in an RFC assessment as long as the medical evidence of record supports
21 the accommodation made for that limitation in the RFC. And Plaintiff has failed
22 entirely to show any “as applied” type error, as he has not shown that the medical
23 evidence of record that was properly credited required any further restriction and
24 accommodation in his RFC for the step three functional limitation than he received.
25 On this record, Plaintiff has failed to demonstrate that the ALJ failed to adequately
26 translate his moderate limitation in adapting or managing oneself when formulating
27 the RFC. As substantial evidence supports the ALJ’s RFC formulation in this
28 respect, no error occurred. Reversal and remand, therefore, are not required.

VI. CONCLUSION

For all of the foregoing reasons, the Court:

- (1) denies Plaintiff's request for an order remanding this case to the Commissioner for the immediate payment of benefits or for further proceedings pursuant to Sentence Four of 42 U.S.C. § 405(g) consistent with the Order Accepting this Report and Recommendation;
- (2) affirms the decision of the Commissioner; and
- (3) directs that Judgment be entered dismissing this action with prejudice.

DATED: April 25, 2025



GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE